

**Canadian Human  
Rights Tribunal**



**Tribunal canadien  
des droits de la personne**

**Citation:** 2025 CHRT 66

**Date:** July 7, 2025

**File Nos.:** T2733/10921 and T2734/11021

**Between:**

**Kewal Sidhu & Robert Kopeck**

**Complainants**

**- and -**

**Canadian Human Rights Commission**

**Commission**

**- and -**

**International Longshore and Warehouse Union Local 500**

**Respondent**

**Ruling**

**Member:** Paul Singh

## I. NATURE OF MOTION

[1] The Complainants Robert Kopeck and Kewal Sidhu say that the Respondent International Longshore and Warehouse Union Local 500 (the “Union”) engaged in age-based discrimination contrary to sections 9 and 10 of the *Canadian Human Rights Act* R.S.C., 1985, c.H-6 (“CHRA”) when the Union instituted a policy limiting their work opportunities because they collected a pension (the “Complaints”). The Union denies discriminating.

[2] The Complaints were consolidated with the consent of the parties, and it was agreed that the proceedings would be bifurcated into two separate phases. If liability was established, the Tribunal would then determine remedies in a subsequent hearing.

[3] Following a five-day liability hearing, I determined that the Complaints were substantiated and that the Union’s actions constitute discrimination: *Kewal Sidhu & Robert Kopeck v. International Longshore Warehouse Union Local 500*, 2025 CHRT 11 (the “Liability Decision”).

[4] In March 2025, the Union filed an application with the Federal Court to seek judicial review of the Liability Decision. In April 2025, the Union filed a motion with the Tribunal to seek a stay of proceedings pending the court’s ruling on the judicial review (“Stay Motion”). Submissions for the motion were completed in June 2025.

[5] The Complainants oppose the Stay Motion. In support of their position, Mr. Kopeck has filed an affidavit which appends his medical records. Given the sensitive nature of the records, he seeks a confidentiality order for the affidavit.

## II. RULING

[6] Mr. Kopeck’s request for a confidentiality order is granted. His affidavit will be held under seal in the Tribunal’s records and will not form part of the public record.

[7] The Union’s Stay Motion is dismissed.

### III. ANALYSIS

#### A. Confidentiality Motion

[8] Mr. Kopeck says that given his health condition, a delay arising from a stay of proceedings would prejudice the Complainants. In support of his argument, he has filed an affidavit affirmed April 26, 2025 (the “Kopeck Affidavit”) which appends medical records related to his health condition. He applies for a confidentiality order regarding the affidavit to protect his privacy. The Union consents to the application.

[9] Judicial proceedings, including those of this Tribunal, are presumptively open to the public and the open court principle is essential to the proper functioning of Canadian democracy.

[10] However, Canadian law recognizes there are times where there needs to be discretionary limits on court openness to protect other public interests such as the protection of individual privacy: *Sherman Estate v. Donovan*, 2021 SCC 25 (“*Sherman Estate*”). The need for this flexibility in the application of the open court principle for the Tribunal is set out in section 52 of the CHRA. It provides broad powers to the Tribunal to take any measures and make any orders it considers necessary to ensure the confidentiality of the inquiry in certain circumstances

[11] Section 52 of the CHRA provides that:

1. An inquiry shall be conducted in public, but the member or panel conducting the inquiry may, on application, take any measures and make any order that the member or panel considers necessary to ensure the confidentiality of the inquiry if the member or panel is satisfied, during the inquiry or as a result of the inquiry being conducted in public, that:
  - a. there is a real and substantial risk that matters involving public security will be disclosed;
  - b. there is a real and substantial risk to the fairness of the inquiry such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public;
  - c. there is a real and substantial risk that disclosure of personal or other matters will cause undue hardship to the persons involved such that the need to prevent disclosure outweighs the societal interest that the inquiry be conducted in public; or

- d. there is a serious possibility that the life, liberty or security of a person will be endangered.

[12] The Supreme Court of Canada's decision in *Sherman Estate* informs the statutory analysis the Tribunal must undertake on a motion for a confidentiality order and is consistent with the provisions of section 52 of the CHRA: *SV SM, JR v. RCMP*, 2021 CHRT 35 at para. 8.

[13] The Supreme Court in *Sherman Estate* sets out a three-part test for discretionary orders limiting the open court principle. In order to succeed in seeking a limit on presumptive court openness, it must be established that:

- a. court openness poses a serious risk to an important public interest;
- b. the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and,
- c. as a matter of proportionality, the benefits of the order outweigh its negative effects.

[14] In this case, section 52 (c) of the CHRA is applicable to Mr. Kopeck's circumstances. The Kopeck Affidavit contains highly sensitive and personal medical information which, if released, will cause undue hardship to Mr. Kopeck. These medical records fall within what the Supreme Court has identified as important and protected privacy interests, namely "the core identity of the individual concerned: information so sensitive that its dissemination could be an affront to dignity": *Sherman Estate* at para. 34; see also *Lise-Nordhage-Sangster v. Canada Border Services Agency and Mark Pridmore*, 2023 CHRT 45 at para. 29.

[15] Limiting public disclosure of the Kopeck Affidavit will have minimal impact on the open court principle since the content of the affidavit does not go to the core of the issues the Tribunal must decide. Similarly, no prejudice arises to the Union since the Union will have access to the affidavit. Therefore, as a matter of proportionality, the benefits of a confidentiality order outweigh its negative effects, and no reasonable alternative measures are available to protect Mr. Kopeck's privacy interests.

## B. Stay motion

[16] It is settled law that the Tribunal has discretion to stay its own proceedings. However, that discretion should only be exercised in cases of extraordinary circumstances or unusual urgency: *Laurent Duverger v. 2553-4330 Quebec Inc.*, 2018 CHRT 5 at para. 37; *Canadian Association of Elizabeth Fry Societies and Acoby v. Correctional Service of Canada*, 2019 CHRT 30 at para. 14; *Choudhary v. Greg Scott and Kinistin Saulteaux Nation*, 2022 CHRT 28 at para. 19.

[17] The Tribunal's ruling in *Adams v. Canadian Nuclear Laboratories*, 2024 CHRT 87 at paras 8-11 summarizes the applicable law for stay requests. In determining a motion to stay its proceedings the Tribunal must consider whether interest of justice considerations support granting the motion. These considerations can include the risk of duplication of judicial and legal resources, the length of the requested stay, the reason for the request, the potential loss of judicial resources, the procedural status of the proceedings, and any prejudice to the parties.

[18] The Union says a stay of proceedings is in the interest of justice for several reasons.

[19] By issuing the Liability Decision, the Union says the Tribunal has taken concurrent jurisdiction over a dispute that is within the jurisdiction of the Canada Industrial Relations Board ("CIRB") and has issued a decision which conflicts with prior CIRB decisions. Additionally, the Union says the Complainants are seeking a remedy which is unfair to other members of the Union and, if implemented, will require CIRB to determine if that remedy is permitted under the *Canada Labour Code* RSC 1985, c L-2, which may result in more conflicting decisions. The Union says they seek clarity from the court regarding these conflicting decisions, which warrants a stay of proceedings.

[20] I am not persuaded by this argument. The rationale underlying the Union's judicial review of the Liability Decision is that the Tribunal allegedly erred in assuming jurisdiction to hear the Complaints. At this time, that rationale is simply an allegation, and one which was considered and rejected by the Tribunal. The Union raised similar arguments in a motion to dismiss the Complaints prior to the liability hearing. In that motion, the Union argued that CIRB previously dismissed related complaints by the Complainants and that the Complaints should be dismissed on the basis of issue estoppel, abuse of process, and a collateral attack on CIRB rulings.

[21] In dismissing the Union's motion, I determined that the scope of the issues before the CIRB and the Tribunal were distinguishable. I found that CIRB did not fully address the broader issues of discrimination before this Tribunal nor did CIRB apply the necessary legal test for discrimination when analyzing the issues before it. I also held that, in any event, the Complainants should not be estopped from proceedings with their human rights complaints given my concerns about the quality of the evidence presented and relied upon in the CIRB proceedings: *Sidhu and Kopeck v. ILWU 500*, 2023 CHRT 4.

[22] I am not persuaded that it is relevant, when deciding the Stay Motion, for the Tribunal to speculate on the merits of the Union's anticipated arguments before the court or to speculate, without evidence, on the potential impact of its decision on present or future CIRB rulings. Nor is it relevant, when deciding the Stay Motion, for the Tribunal to speculate, without evidence, on alleged unfairness to other Union members from potential remedies that may be granted to the Complainants following a remedy hearing.

[23] The Union also says that following the decision of the Canadian Human Rights Commission ("Commission") to refer the Complaints to the Tribunal, the Commission provided disclosure of its file but explained that the disclosure may not be complete due to circumstances related to COVID-19. The Union says it subsequently discovered that the Commission had disclosed the investigation report to a third party that were respondents to separate complaints brought by the Complainants. The Union says that the discussion of the Commission's investigation report with an interested third party resulted in the Commission reversing its recommendation to dismiss the Complaints and to proceed with the Complaints. The Union says the Commission's actions constitute a "clear infringement of natural justice" which warrants a stay of proceedings until the Commission discloses the full record of its relevant communications.

[24] The Union further says that in the course of preparing for judicial review of the Liability Decision, they learned of complaints brought by the Complainants on the same facts against the BC Maritime Employers Association ("BCMEA"). The Union says the Complainants have not provided requested particulars regarding the BCMEA complaints. Without these particulars, the Union says they are unable to determine whether to make an application to have the BCMEA added as a respondent to the Tribunal proceedings or whether to take a

position that the BCMEA is partially liable for the damages sought. This, they say, warrants a stay of proceedings.

[25] I am not persuaded by these arguments. The Tribunal does not have jurisdiction to review decisions made by the Commission in its screening process, regardless of the basis. If the Union disagrees with a decision of the Commission or believes the process was tainted, the proper recourse is judicial review: *Mohammed Tibilla v. Canada Revenue Agency*, 2025 CHRT 24 at para. 31; *Canada (Human Rights Commission) v. Warman* 2012 FC 1162 at para 56 (affirmed 2014 FCA 18).

[26] In addition, any outstanding disclosure or particulars the Union may require from the Complainants, Commission, or a third-party to prepare for the remedy hearing does not necessitate a stay of proceedings. The Tribunal has yet to set a date for the remedy hearing. The Union therefore has ample time to apply to the Tribunal for any necessary relief prior to the hearing.

[27] The Union has filed a Notice of Constitutional Question (“NOCQ”) with the Tribunal wherein they challenge the constitutionality of certain provisions of the *Income Tax Act* RSC 1985, c 1 (5th Supp). By consent of the parties, the determination of the NOCQ by the Tribunal was deferred until the Liability Decision was issued. The Union says that if the inquiry proceeds, the Tribunal will have to decide the significant legal issue of whether age requirements limiting pension accrual and benefit payments in the *Income Tax Act* violate the equality provision of the *Charter of Rights and Freedoms*. To avoid unnecessary waste of resources, the Union says the proceedings should be stayed pending completion of the judicial review.

[28] The Union also says the remedy hearing will be complex, and the Tribunal will need to review extensive evidence to determine the scope of income loss and other remedies sought by the Complainants. To avoid unnecessary waste of resources, the Union again says the proceedings should be stayed pending completion of the judicial review.

[29] I am not persuaded by these arguments. There is insufficient evidence to conclude the remedy hearing will be unduly complex. There are only two complainants seeking remedies and the time-period for their alleged income loss is discrete and well-defined. Additionally,

while the Union has alleged that the Complainants have failed to mitigate their damages, the Tribunal routinely addresses mitigation issues at hearings.

[30] Proceeding with the NOCQ (assuming the Tribunal has jurisdiction to do so) and a remedy hearing in the face of a pending judicial review may potentially result in unnecessary expenditure of resources if the Liability Decision is altered by the court.

[31] However, this alone does not warrant a stay of proceedings when balanced with the prejudice to the Complainants arising from continued delay. Both Complainants are elderly and are presently 79 years of age. Mr. Kopeck's affidavit particularizes serious and acute medical conditions which may impact on his longevity.

[32] I note that no date has been set for the judicial review hearing of the Liability Decision. Further, there is no indication of when the judicial review process (including any appeals) will conclude or that it will conclude expeditiously. The process may take years.

[33] In these circumstances, the prejudice to the Complainants arising from delay is significant given their advanced age and deteriorating health. On the other hand, the Union has presented no compelling evidence of any serious prejudice to them if the Tribunal proceeds with its inquiry. This supports a dismissal of the Stay Motion.

#### **IV. CONCLUSION AND ORDER**

[34] Mr. Kopeck's request for a confidentiality order is granted. The Kopeck Affidavit will be held under seal in the Tribunal's records and will not form part of the public record.

[35] The Stay Motion is dismissed.

*Signed by*

Paul Singh  
Tribunal Member

Ottawa, Ontario  
July 7, 2025

## **Canadian Human Rights Tribunal**

### **Parties of Record**

**Tribunal Files:** T2733/10921 and T2734/11021

**Style of Cause:** Kewal Sidhu & Robert Kopeck v. International Longshore and Warehouse Union Local 500

**Ruling of the Tribunal Dated:** July 7, 2025

**Motion dealt with in writing without appearance of parties**

**Written representations by:**

Raymond D. Hall, Counsel for the Complainants

Craig Bavis, Counsel for the Respondent